

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 98-387-C - ORDER NO. 98-949

DECEMBER 3, 1998

IN RE: Application of NOW Communications, Inc.)	ORDER
for a Certificate of Public Convenience and)	GRANTING
Necessity to Offer Local Exchange and)	CERTIFICATE
Interexchange Telecommunications Services)	
within the State of South Carolina.)	

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the Application of NOW Communications, Inc. ("NOW" or "the Company") for authority to provide both local exchange and long distance telecommunications services within the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §§ 58-9-280 and 58-9-520 and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed NOW to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. NOW complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC"). Prior to the hearing, counsel for SCTC filed a Stipulation in which NOW stipulated that it would only seek authority in non-rural local exchange ("LEC") service

areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until NOW provided written notice of its intent prior to the date of the intended service. NOW also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. NOW agreed to abide by all State and Federal laws and to participate to the extent it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to NOW's Application provided the conditions contained in the Stipulation are met. At the hearing NOW offered the Stipulation into evidence. The Stipulation is approved and attached hereto as Exhibit 1.

A hearing was commenced on November 5, 1998, at 12:00 p.m., in the Commission's Hearing Room. The Honorable Philip Bradley, Chairman, presided. NOW was not represented by counsel. Florence P. Belser, Staff Counsel, represented the Commission Staff.

Larry W. Seab, Chief Executive Officer and President of NOW, appeared and offered testimony in support of NOW's application. The record reveals that NOW is a Mississippi corporation which is registered to conduct business in South Carolina as a foreign corporation with the South Carolina Secretary of State. According to Mr. Seab, NOW proposes to provide local exchange and intrastate interLATA interexchange telecommunications services on a prepaid basis within the state of South Carolina. Mr. Seab stated that NOW is a company dedicated to providing telephone service to those individuals who do not have basic phone service and that NOW desires to provide access

to those who have been unable, usually due to credit or employment problems, to secure basic local exchange services.

Mr. Seab explained that NOW possesses the technical, financial, and managerial resources and abilities to provide interexchange and local exchange telecommunications services. Mr. Seab stated that he has been involved in the independent telephone industry since 1971. The record reveals that the management team of NOW possesses experience in the telecommunications industry as well as experience in sales and marketing. Further, the record reveals that NOW has adequate financing and financial ability to provide the services which it seeks to provide. Mr. Seab stated that NOW has approximately 10,000 customers in Mississippi and approximately 6,000 customers in Louisiana. Mr. Seab also stated that NOW has been certified to operate in the states served by Southwestern Bell as well as several other states, and that NOW is beginning to provide service in Arkansas, Tennessee, Kentucky, Georgia, and Florida.

Mr. Seab offered that NOW's entry into the telecommunications industry in South Carolina will (1) ensure that all consumers benefit from increases in competition (not just credit-worthy and business markets) and (2) increase the choices consumers have among telecommunications service plans and products. Mr. Seab also testified that approval of NOW's application would not adversely impact affordable local exchange service, and no party of record offered any evidence that the provision of local exchange service by NOW will adversely affect local rates.

Mr. Seab testified that the Company would operate in accordance with the Commission rules, regulations, guidelines and Commission Orders. Mr. Seab also stated that NOW would support universally available telephone service at affordable rates and

that the provision of local service by NOW would not adversely impact affordable local service. Mr. Seab specifically stated that the services NOW will provide will meet the service standards of the Commission. Additionally, the record reveals descriptions of NOW's services, operations and marketing procedures.

By its Application, NOW requested a waiver from posting a surety bond in order to secure customers' prepayments and requested a waiver of any requirement to file maps of exchange areas in which it operates.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

1. NOW is organized as a corporation under the laws of the State of Mississippi and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. NOW wishes to provide local exchange services and interexchange services within the State of South Carolina.
3. The Commission finds that NOW possesses the technical, financial, and managerial resources sufficient to provide the service requested.
4. The Commission finds that NOW's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. § 58-9-280(B)(3) (Supp. 1997).
5. The Commission finds that NOW will support universally available telephone service at affordable rates.

6. The Commission finds that NOW will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by NOW “does not otherwise adversely impact the public interest.” S.C. Code Ann. §58-9-280(B)(5) (Supp. 1997).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NOW to provide competitive intrastate local exchange services in the areas of South Carolina served by BellSouth, GTE, and Sprint/United and to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission. Any proposal to provide local exchange service to rural service areas is subject to the terms of the Stipulation between NOW and SCTC.

2. NOW shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

3. The Commission adopts a rate design for NOW for its long distance services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application

of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

With regard to its long distance services rates, NOW shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. NOW shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (Supp. 1997).

4. If it has not already done so by the date of issuance of this Order, NOW shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. NOW is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. NOW shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NOW changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, NOW shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

9. NOW shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

NOW shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the

representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

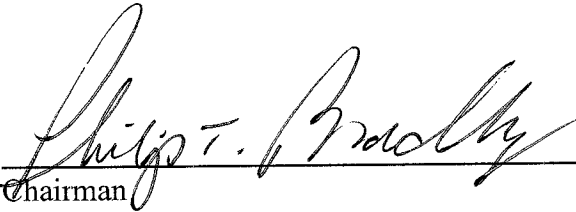
11. NOW shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

12. As a condition of offering prepaid long distance services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition of a bond may be reviewed in one year.

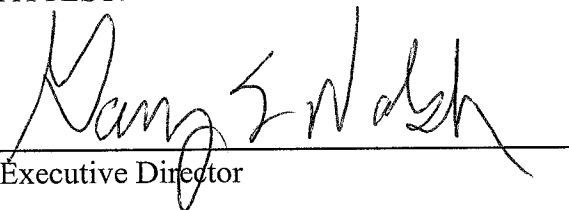
13. By its Application, NOW requested waivers from posting a surety bond in order to secure customers' prepayments and from any requirement to file maps of exchange areas in which it operates. The Commission denies the request to waive the posting of a surety bond to protect customers prepayment of long distance services and requires NOW to post the \$5000 bond as described in Paragraph 12 above. The Commission grants the request the waiver of the requirement of filing maps of exchange areas in which NOW may operate.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING

- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

DOCKET NOS. 98-387-C - ORDER NO. 98-949
DECEMBER 3, 1998
ATTACHMENT B

**INFORMATION OF THE AUTHORIZED UTILITY
REPRESENTATIVES FOR INTEREXCHANGE, LOCAL
AND AOS COMPANIES**

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and maintain with the Commission
the name, title, address, and telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by Signature

If you have any questions, contact the Consumer Services Department at 803-737-5230

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 98-387-C

Re: Application of NOW Communications, Inc.)
for a Certificate of Public Convenience and Necessity)
to Provide Local Exchange and Interexchange)
Telecommunications Services in South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and NOW Communications, Inc. ("NOW") hereby enter into the following stipulations.

As a consequence of these stipulations and conditions, the necessity for SCTC's intervention in this matter is avoided and SCTC withdraws its opposition to NOW's Application. SCTC and NOW stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to NOW, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. NOW stipulates and agrees that any Certificate which may be granted will authorize NOW to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. NOW stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. NOW stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until NOW provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, NOW acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. NOW stipulates and agrees that if, after NOW gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then NOW will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. NOW acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service

which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. NOW agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. NOW hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 9th day of September, 1998.

NOW Communications, Inc.

R. Scott Seab

NOW Communications, Inc.
R. Scott Seab, VP - Law
711 S. Tejon, Suite 201
Colorado Springs, CO 80903

South Carolina Telephone Coalition:

Margaret M. Fox

M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29201
(803) 799-9800

Attorneys for the South Carolina
Telephone Coalition

ATTACHMENT A
South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Hargray Telephone Company, Inc.
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company